IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr.(Smt.)Beena Tripathi v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.2102/1997
under Article 226 of the Constitution of India.

Date of Order : 19th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. J.M.Bhandari, for the respondents.

BY THE COURT :

The respondent University by an advertisement No.7/95-96 dated 24.4.1995 invited applications from eligible desirous Indian Nationals for the purpose of appointment to the post of Assistant Professors (Lecturers) in the pay scale of 2200-4000 in various subjects including subject of Geology. The petitioner in pursuant to the advertisement dated 24.4.1995 submitted an application to be considered for promotion as Assistant Professor in the subject of Geology. The petitioner was interviewed by competent

selection committee constituted under the Rajasthan Universities Teachers and Officers (Selection for Appointment) Act, 1974 (hereinafter referred to as "the Act of 1974") on 8.6.1996. The recommendations of the selection committee with regard to the appointments in departments other than to the Department of Geology were considered by the syndicate of the university met on 27.7.1996. The recommendations in relation to appointment on the post of Assistant Professor in Department of Geology was not considered in view of an interim order passed by this Court on 25.6.1996 in SBCivil Writ petition No.1914/96 (Dinesh Shringi & Anr. v. Jai Narain Vyas University, Jodhpur). The interim order dated 25.6.1996 referred above reads as under:-

> "Writ petition has already been admitted.
>
> Heard the learned counsel for the parties on stay application.
>
> The case be put up before the regular Bench on 2nd July, 1996, during the meanwhile no appointments against one post each in Mechanical Engineer and Geology shall be made."

The petitioner who was already working with the respondent University as Assistant Professor in adhoc capacity was ordered to be terminated from services under an order dated 27.7.1996, validity of

the same was challenged by the petitioner by way of filing a writ petition bearing No.2454/1996 which came to be accepted by this Court by judgment dated 9.1.1997. The petitioner as such is still working as Assistant Professor on adhoc basis in the Department of Geology of the respondent University.

The syndicate of the university in its meeting dated 19.4.1997 resolved for providing avenues for promotion to the demonstrator/instructor working in the university for general faculty and engineering faculty. For the purpose an amendment was introduced in Ordinance 317 and 317(4) of the Jai Narain Vyas University Ordinance.

Being aggrieved by resolution of the University the petitioner preferred the instant writ petition with a contention that the post of teacher is governed by the provisions contained in the Act of 1974 and Section 3 of the said Act provides that no teacher and no officer in any university in Rajasthan shall be appointed except on the recommendations of the selection committee constituted under Section 5. Sub-sec.(2) of Section 3 of the Act of 1974 provides that the appointment made in contravention of sub-sec. (1) shall be null and void. Section 12 of the Act of 1974 provides that the Act of 1974 shall be having overriding effect on any provision contained in the relevant law.

In view of the provisions above it is contended by counsel for the petitioner that the syndicate of the university was having no authority to provide avenue for promotion to the post of Assistant Professor by making amendments under Ordinance 317. The petitioner gave challenge to the provision above apprehending filling of vacancy in Department of Geology by way of promotion.

It is also contended by counsel for the petitioner that even if it is assumed that the syndicate of the university was well within its jurisdiction to make a provision for appointment to the post of Assistant Professor by making an amendment under Ordinance 317 then too the same could not be applied to the vacancy against which the petitioner faced an interview on 8.6.1996 as the amendment so introduced under Ordinance 317 was made on 19.4.1997.

A reply to the writ petition has been filed on behalf of the respondents. The respondents in quite unambiguous terms have stated that the respondent University is not filling up one vacant post of Assistant Professor in Department of Geology. This averment is made by the respondents while giving reply to the averments contained in sub-para (b) of para 16 of the writ petition. In sub-para(b) of para 16 of the writ petition it is averred that the action of the

respondent University in filling up the one vacant post of Assistant Professor in Department of Geology by promotion is illegal and without jurisdiction. The respondents while denying the averment above stated as under:-

> "It is not admitted that the respondent University is filling up one vacant post of Assistant Professor in the Department of Geology by promotion."

The denial on part of the respondents as above clearly shows that there was no intention of filling in the only vacancy pertaining to the post of Assistant Professor available in the Department of Geology to be filled in by way of promotion.

The respondents have also accepted that the recommendation made by the selection committee with regard to appointment in Department of Geology was not considered by the selection committee in view of interim order passed by this Court in SBCWP No.1914/96 (supra). It is stated at Bar that the interim order passed by this Court in SBCWP No.1914/96 (supra) is not now in currency as the writ petition itself was dismissed being withdrawn by order dated 6.3.1998. It is also stated at Bar that in spite of withdrawal of the writ petition No.1914/96 (supra) the recommendation made by the selection committee have

not been placed before the syndicate of the university so far.

I have considered all the facts and legal position stated above.

It is the position admitted by the respondent University that the post of Assistant Professor in Department of Geology sought to be filled in by way of direct recruitment under the advertisement dated 24.4.1995 was never sought to be filled in by way of promotion by the university. It is also the position admitted that the recommendation made by the competent selection committee to make appointment to the post of Assistant Professor in Department of Geology was not considered by the syndicate of the university in view of interim order passed by this Court in SBCWP No.1914/96 (supra) and the interim order in pursuant to which the recommendation made by the selection committee was not considered is not in currency since 6.3.1998, the day on which the said writ petition was dismissed being withdrawn.

In view of the factual position above I, without entering into the controversy with regard to validity of amendment introduced in Ordinance 317 pertaining to provision for promotion to the post of Assistant Professor, consider it appropriate to direct the respondent University to place the recommendation

made by the selection committee with regard to appointment to the post of Assistant Professor in Department of Geology of the respondent university for its consideration.

Accordingly the writ petition is disposed of with a direction to the respondent university to place the recommendation made by the competent selection committee with regard to appointment on the post of Assistant Professor in the Department of Geology made in pursuant to the selection proceedings taken under the advertisement dated 24.4.1995 within a period of three months from today for its consideration. In event the petitioner is found suitable for appointment, appointment be accorded to her in accordance with law.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.